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FROM: David E. Boundy

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TO: Examiner P. Kanof

Fax No.: 703 872 9306

Telephone No.: 703 305 xxxx

Supervisory Examiner Hyung
Sough

Art Unit 3628,

U.S. Patent and Trademark Office City: Alexandria

State: Virginia

CONCERNING APPLICATION:

Applicant(s): Douglas G. Lowenstein, et al.

Serial No.: 09/611,548

Art Unit: 3628

Filed: July 7, 2000

Examiner: P. Kanof

Title: FINANCING OF TENANT IMPROVEMENTS

I hereby certify that the attached

- This FAX cover sheet
- Applicant's Interview Summary

along with any paper(s) referred to as being attached or enclosed) are being transmitted by facsimile on April 21, 2004 to Art Unit 3628, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: April 21, 2004

By:

David E. Boundy

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/611,548

Confirmation No.: 6763

Applicant: Douglas G. Lowenstein, et al.

Title: FINANCING OF TENANT IMPROVEMENTS

Filed: July 7, 2000

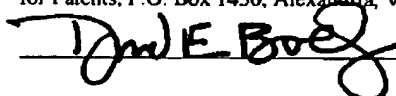
Art Unit: 3628

Examiner: P. Kanof

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Atty Docket: 114595-02

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APPLICANT'S INTERVIEW SUMMARY

Art Unit 3628

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Examiners Kanoff and Sough:

I'd like to follow up on several issues that have been before you three times on papers, and in our two interviews. In the interview of January 6, 2004, I pointed out where these issues are raised in my papers, and we agreed that the two most recent Office Actions do not respond. We agreed that you would look into these issues and let me know if you believed you had basis to maintain the rejections. We agreed that if you did, you'd phone to explain. The examiner's interview summary of January 22, 2004 only touches on one of the four, so I just want to confirm with you that the other three are no longer live issues, and that the rejections are withdrawn.

1. Your "motivation to combine" Little and Weatherly was to increase the tax deduction. Little states that her lease payments are already fully tax deductible. We agreed that neither of us had any basis to believe that tax deductions could exceed 100% (that is, the government subsidizes the taxpayer). Because I have not heard back from you, I understand that the rejections based on a combination of Little and Weatherly for tax reasons are withdrawn.

2. We discussed the claims that recite a Special Purpose Entity (SPE) that is owned by (or otherwise related to) the landlord or lessor. The portion of the reference indicated in the

Applicant's Interview Summary
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Office Action does not mention either an SPE or a landlord. Because I have not heard back from you, I am assuming that you no longer believe these claims correspond to Little, and that any rejection of these claims is now withdrawn.

3. We noted that the Office Actions relied on Official Notice beyond the bounds permitted by the MPEP. I am assuming that rejections based on Official Notice are now withdrawn.

4. We also discussed the "two distinct leases" of several claims. In your interview summary, you compare a "lease" to a "mortgage" in Little. A "mortgage" is just another form of a loan. A "mortgage" (or any other form of loan) is the opposite of a "lease:" in a mortgage, the owner **pays** payments to a bank, but in a lease, the owner **receives payments** from a tenant. If you still believe that there is some correspondence between the claims and the reference, I need some explanation of your position to respond effectively.

5. In the interview, we touched on this briefly, but I don't believe we included this in our list of agreements at the end of the interview. I have twice submitted the same references and IDS (April 29 and June 3, 2003), and I still do not have a check-off from you. How should we clear that up?

If we've reached an agreement on at least the first three points, I'd like a confirmation of that. But if we disagree, without some explanation of your thoughts, the only thing I can do in my next paper is ask you look at and respond to the prior papers (the best explanation is in my Response of March 31, 2003 at pages 6-14; see also my Response of June 17, 2002 at 5-8, and a telephoned request for reconsideration memorialized in Supervisory Examiner Sough's Interview Summary of November 3, 2003). Until you "Answer All Material Traversed," MPEP § 707.07(f), to let me know precisely where we agree and where we disagree, I can't respond any differently to your January 2004 Office Action than I did to the two earlier ones. That would simply be a waste of your time, so I'd like to get your thoughts.

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I'll be happy to respond to the § 101 and § 112 ¶ 2 issues by papers, once I know where we're going on the prior art issues.¹

It seems we're more likely to understand each other's positions by phone than by written papers. Kindly call me within the next few days to discuss how to proceed.

I authorize you to respond by email if you'd prefer: DBoundy@Willkie.com

Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 23-2405, Order No. 114595-02.

Respectfully submitted,

WILLKIE FARR & GALLAGHER, LLP

Dated: April 21, 2004

By: 

David E. Boundy
Registration No. 36,461

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¹ The Examiner's Interview Summary of January 22, 2004 is incorrect: Applicant did not agree to amend the claims for § 112 ¶ 2 reasons. Applicant explained that the legal basis raised in the Office Action is incorrect. In the interview, the two examiners were unable to cite any authority to support the rejection, and none is attached to the interview summary.

In the interview, Applicant also noted that MPEP § 2173.05(a) instructs that "if the language is as precise as the subject matter permits, the statute ... demands no more." In the Interview, Applicant requested any suggestion the Examiners might offer for language that might "improve the clarity or precision" of the claims without changing their scope; the Examiners were unable to offer any such suggestion. Unless there is language that is more precise, Applicant suggests that the claims are "as definite as the subject matter permits," and meet the requirements of § 112 ¶ 2.